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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/903,831	07/11/2001	Thomas J. Maginot	22220-06167	1578
758	7590	04/23/2004	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			PREBILIC, PAUL B	
			ART UNIT	PAPER NUMBER
			3738	<i>21</i>
DATE MAILED: 04/23/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/903,831	Applicant(s) MAGINOT, THOMAS J.
	Examiner	Art Unit
	Paul B. Prebilic	3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### **Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1)  Responsive to communication(s) filed on 29 January 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4)  Claim(s) 67,69-110,113-115 and 117-166 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 70,71,75-78,80-107,109,117-119,121-136 and 153-166 is/are allowed.

6)  Claim(s) 67,69,72-74,79,108,110,113,114,120,137-139,141,144,147-149 and 152 is/are rejected.

7)  Claim(s) 115,140,142,143,145,146,150 and 151 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/11/03.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

The indicated allowability of claims 74, 79, 110, 113, 120, 137-139, 141, 144, 147-149, and 152 is withdrawn in view of the newly discovered rejections. Rejections based on the newly applied prior art follow.

***Specification***

The disclosure is objected to because of the following informalities:

On page 1 of the specification, the status of the continuing data is not updated with the current status of each parent application and it refers to some of the patented applications as "copending."

Appropriate correction is required.

***Claim Objections***

Claim 120 is objected to because of the following informalities: On line 8 of claim 120, "the first portion" lack antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 67, 69, 72-74, 79, 137-139, 141, 144, 147-149, and 152 are rejected under 35 U.S.C. 102(b) as being anticipated by Donaldson (US 2,935,068). Donaldson anticipates the claim language where the graft with orifice as claimed is met by the instrument C3 where the orifice is best shown in Figure 7 as port (46) of Donaldson.

The plurality of arms as claim are met by the tubular members (43) and (40) of Donaldson; see Figures 2 to 4 and 7 as well as column 2, line 6 to column 3, line 10.

With regard to claim 72, Applicant is directed to Figure 3.

With regard to claim 137, the struts as claimed are the tubular members (43) and (40) of Donaldson.

Claims 108, 110, 114, and 120 are rejected under 35 U.S.C. 102(b) as being anticipated by Montanti (US 3,516,408). Montanti anticipates the claim language where the conduit as claimed is tubing (10) of Montanti, the flange as claim claimed is the inflatable balloon or cuff (11) of Montanti; see Figures 1 and 4 as well as column 2, line 26 et seq.

With regard to claim 110, the first part as claimed is cuff (11) of Montanti and the second part as claimed is tubing (12) of Montanti.

Claims 108, 110, 113, 114, and 120 are rejected under 35 U.S.C. 102(b) as being anticipated by Gamponia (US 3,435,824). Gamponia anticipates the claim language in an analogous manner as that set forth in the explanation of the Montanti rejection. In particular, the inflatable cuffs are the flanges as claimed and Gamponia is used in the treatment of the descending aorta; see Figure 1.

#### ***Allowable Subject Matter***

Claims 70, 71, 75-78, 80-107, 109, 117-119, 121-136, and 153-166 are allowed over the prior art of record.

Claims 115, 140, 142, 143, 145, 146, 150, and 151 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in

independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Prebilic whose telephone number is (703) 308-2905. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax phone number for this Technology Center is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 3700 receptionist whose telephone number is (703) 308-0858.



Paul Prebilic  
Primary Examiner  
Art Unit 3738